

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICKI DALE DIERENFELDT, et al.,
Plaintiffs,
v.
ST. JOSEPH HEALTH, et al.,
Defendants.

Case No. [17-cv-06460-WHO](#)

**ORDER GRANTING FEDERAL
DEFENDANT'S MOTION TO DISMISS;
REMANDING CASE TO STATE
COURT**

Re: Dkt. No. 6

The United States first moves to dismiss defendant Open Door Community Health Centers; a federally supported health center under the Department of Health and Human Services. Dkt. No. 6. The United States contends, and plaintiffs agree, that the United States is the proper defendant. Therefore, Open Door Community Health Centers is DISMISSED with prejudice.

The United States also moves to dismiss without prejudice for lack of subject matter jurisdiction, as plaintiffs have not exhausted their administrative remedies under the Federal Torts Claims Act (FTCA). Plaintiffs do not dispute that they need to and have yet to exhaust their FTCA remedies. Instead, they contend that instead of dismissing I should stay the case, in the interests of judicial economy, as the FTCA claims will be exhausted on or around February 18, 2018. Dkt. No. 9.

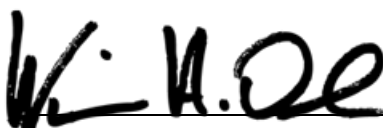
However, exhaustion of the FTCA administrative process must be completed *before* I have jurisdiction over an FTCA claim. Jurisdiction is determined at the time a complaint is filed or as here, removed. *Brady v. U.S.*, 211 F.3d 499, 502 (9th Cir. 2000). This case, therefore, must be dismissed with respect to the United States. *D.L. by and through Junio v. Vassilev*, 858 F.3d 1242, 1245 (9th Cir. 2017). As confirmed by *Vassilev*, the course for this case is dismissal without prejudice as to the United States, remand to state court, and then amendment to assert an exhausted FTCA claim against the United States, followed by a second removal.

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The motion to dismiss is GRANTED, and the United States is DISMISSED WITHOUT PREJUDICE. Lacking any federal subject matter jurisdiction, this case is REMANDED back to the California Superior Court for Humboldt County.

IT IS SO ORDERED.

Dated: December 29, 2017



William H. Orrick
United States District Judge